

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

**Complaint No. : 392 of 2018**  
**First date of Hearing : 02.08.2018**  
**Date of Decision : 05.09.2018**

Mr. Kamal Sharma  
R/o : H.No. 858, VPO Ranila, Distt.  
Charkhi Dadri, Haryana-127110.

**Complainant**

Versus

M/s Pareena Infrastructure Pvt.Ltd.  
Regd. Address: 2, Palms Apartment,  
Plot No,-13, Sector-6, Dwarka,  
New Delhi-110045.

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar  
Shri Subhash Chander Kush

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Shri Sushil Yadav Advocate for the complainant  
Shri Prashant Sheoran Advocate for the respondent  
Shri Sanjeev Kumar Authorized representative on  
behalf of the respondent  
company.



**ORDER**

1. A complaint dated 06.06.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and

Development) Rules, 2017 by the complainant Mr. Kamal Sharma, against the promoter M/s Pareena Infrastructure Pvt. Ltd. In the present complaint, the complainant is alleging that the due date of handing over the possession was 17<sup>th</sup> April 2018, which is 4 years from the date of execution of apartment buyer agreement, and the respondent has failed to deliver the same by the said date which is in violation of promoter's obligation under section 11(4)(a) of the Act *ibid*.

2. The particulars of the complaint case are as under: -

1.	Name and location of the project	"The Elite Residences", Sector 99, Gurugram, Haryana.
2.	RERA registered/ not registered	<b>Not registered</b>
3.	Apartment/unit no.	A-902, 9 <sup>th</sup> floor, tower/ block no. A.
4.	Apartment measuring	2150 sq. ft.
5.	Apartment buyer's agreement executed on	17 <sup>th</sup> April 2014
6.	Total consideration amount as per agreement dated 17.04.2014	Rs.1,42,88,750/-
7.	Total amount paid by the complainants till date	Rs.63,08,283/-
8.	Percentage of consideration amount	Approx. 44 percent
9.	Date of delivery of possession as per clause 3.1 of apartment buyer agreement (4 Years plus grace period of 6 months from the start of construction or execution of this agreement whichever is later.)	17 <sup>th</sup> October 2018.
10.	Delay in handing over possession till date	<b>Premature</b>



11.	Penalty clause as per apartment buyer agreement dated 17.04.2014	Clause 5.1 of the agreement i.e. Rs.5/- per sq. ft. per month of the super area till the date of notice of possession.
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3. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. An apartment buyer agreement is available on record for the aforesaid unit according to which the possession of the said apartment is to be delivered by 17<sup>th</sup> October 2018. The respondent company has not delivered the possession till 05.09.2018.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 02.08.2018. The case came up for hearing on 02.08.2018 and 05.09.2018. The reply has been filed on behalf of the respondent which has been perused.

5. Briefly stated, the facts of the complaint are that the respondent gave advertisement in various leading newspapers about their forthcoming project named "The Elite Residences" Sector 99, Gurugram promising various advantages, like world class amenities and timely



completion/execution of the project etc. Relying on the promise and undertakings given by the respondent in the aforementioned advertisements Mr. Kamal Sharma, booked an apartment/flat measuring 2150 sq. ft. in aforesaid project of the respondent for total sale consideration is Rs1,42,88,750/- which includes BSP, car parking, IFMS, Club Membership. PLC etc. and the complainant made payment of Rs.63,08,283/- to the respondent vide different cheques on different dates.

6. The complainant submitted that per apartment buyer agreement the respondent had allotted a unit/flat bearing no A-902 on 9<sup>th</sup> floor in tower-A having super area of 2150 sq. ft. to the complainant. That as per clause 3.1 of the flat buyer agreement, the respondent had agreed to deliver the possession of the flat within 4 years from the date of signing of the apartment buyer agreement dated 17.04.2014.
7. The complainant submitted that he regularly visited the site but was surprised to see that construction work is not in progress and no one was present at the site to address the queries of the complainant. It appears that respondent has played fraud upon the complainant. The only intention of the respondent was to take payments for the tower without completing the work. The intention of the respondent being



mala-fide has defrauded the complainant. That despite receiving payment of all the demands raised by the respondent for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondent has failed to deliver the possession of the allotted flat to the complainant within stipulated period.

8. The complainant submitted that the construction of the block in which the complainant flat was booked with a promise by the respondent to deliver the flat by 17.04.2018 but was not completed within time for the reasons best known to the respondent and it clearly shows that ulterior motive of the respondent was to extract money from the innocent people fraudulently.
9. The complainant submitted that due to this omission on the part of the respondent, the complainant has been suffering from disruption on his living arrangement, mental torture, agony and also continues to incur severe financial losses. This could be avoided if the respondent had given possession of the flat on time. That as per clause 5.1 of the apartment buyer agreement dated 17.04.2014 it was agreed by the respondent that in case of any delay the respondent shall pay to the complainant a compensation @ Rs.5/- per sq. ft. per month of



the super area of the apartment. It is however pertinent to mention here that a clause of compensation at such nominal rate @ Rs.5/- per sq. ft. per month for the period of delay is unjust and the respondent has exploited the complainant by not providing the possession of the flat as per the agreed possession plan. If we calculate the amount in terms of financial charges it comes to approximately @ 1% per annum rate of interest whereas the respondent charges 24% per annum interest on delayed payment.

10. The complainant submitted that on the ground of parity and equity the respondent also be subjected to pay the same rate of interest hence the respondent is liable to pay interest on the amount paid by the complainant @24% per annum to be compounded from the promised date of possession till the unit is actually delivered to the complainant.
11. The complainant submitted that he requested the respondent several times on making telephonic calls and also personally visiting the office of the respondent either to deliver possession of the flat in question or to refund the amount along with interest @ 24% per annum on the amount deposited by the complainant but respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainant with his hard earned





huge amount and wrongfully gain himself and caused wrongful loss to the complainant.

**12. The issues raised by the complainant are as follow:**

- i. Whether the terms incorporated in the agreement by the respondent are one sided and are unjustified?
- ii. Whether the respondent has failed to deliver the possession of the said unit within the stipulated time and there is no reasonable justification for the delay?
- iii. Whether the interest cost being demanded by the respondent is very high i.e. @24% and unjustified.

**13. Relief sought**

The complainant is seeking the following reliefs:

- i. Direct the respondent to refund the amount of Rs.63,08,283/- along with interest @24% per annum on compound rate from the date of booking of the flat in question.
- ii. Direct the respondent to pay a sum of Rs.30,000/- as cost of litigation.
- iii. Direct the respondent to pay a sum of Rs.50,000/- for harassment and mental agony suffered by the complainant.



### Respondent's reply

14. The respondent submitted that the complainant had initially booked two units bearing no. A-02 and A-902 in the project named "The Elite Residences", Sector 99, Gurugram.
15. The respondent submitted that out of above stated two units, the complainant made a request that the allotment of the unit No. A-02 be cancelled. The complainant had made the above-mentioned request for cancellation citing some personal circumstances. The complainant further requested that amounts paid by him towards both the units be merged. The complainant requested for merger of amounts towards unit no. A-902.
16. The respondent submitted that when the afore-stated requests were made by the complainant, the respondent was legally entitled to cancel the allotment on account of non-payment of due instalments and to forfeit the earnest money. However, as a gesture of goodwill, instead of forfeiting the earnest money paid by the complainant against unit no. A-02 and in order to build better relations, the respondent vide its letter dated 03.02.2015 allowed the request of the complainant and agreed to merge the amounts which had been paid towards both the units towards single one, i.e. 'A-





902' and to cancel the allotment of A-02.

17. The respondent submitted that when the request made by the complainant was accepted by the respondent, the complainant has specifically acknowledged that “the merger would be binding upon the developer only if you agree to abide by the time bound payment to the retained unit” and “the allottee undertake not to withdraw or cancel the booking of the said retained unit”. That on these conditions only the amount paid against the cancelled unit was adjusted against the retained unit.

18. The respondent submitted that even with regard to the retained unit, the complainant has failed to make the payment of due instalments. It is pertinent to mention here that the complainant had committed breach of the understanding arrived at between the parties as well as the apartment buyer agreement. The complainant has wilfully defaulted against the payments of due instalments on various occasions.

19. The respondent submitted that the details of amount paid by the allottee are as follow:

- i. Total sale consideration: Rs.1,42,88,750/- (without taxes)



- ii. Total amount demanded: Rs.1,05,13,282/- (including taxes)
  - iii. Total amount received: Rs.63,30,500/- (including Rs.29,30,693/- which was adjusted from the amounts paid towards the cancelled unit)
  - iv. Total balance: Rs.81,78,644/- (without interest and without taxes)
  - v. Total balance against amount demanded: Rs.41,82,782/- (including taxes)
  - vi. Total interest on unpaid amount: Rs.21,25,510/- (Rs.22,00,211-Rs.74,701/-)
20. The respondent submitted that as already stated the merger as well as adjustment of amount was subject to time bound payment but in lieu of default committed by complainant the said merger is liable to be revoked and the respondent now has every right to forfeit the amount equivalent 15% of the sale price of cancelled unit amounting to Rs.21,70,057.5/- and taxes already deposited by respondent against the demand raised but not paid by complainant of cancelled unit amounting to Rs. 1,60,931/-. The respondent submitted that in that event only the amount which can be considered to have been paid by complainant is Rs.63,30,500-



Rs.23,30,988/= Rs. 39,99,512/- only and the complainant is liable to pay interest treating that the amount of cancelled unit was never adjusted.

21. The respondent submitted that the complainant misrepresented the respondent that he shall be making the due payments towards the instalments of the retained unit and despite of the fact that the complainant never had any genuine intention to make payments towards the instalments of the retained unit. In these circumstances the complainant does not deserve any relief whatsoever from this hon'ble authority. The complainant cannot be allowed to be benefitted from his own wrongs.

22. The respondent denied that he gave advertisement in various leading newspapers about their forthcoming project named "The Elite Residences" Sector 99. The respondent submitted that the complainant is trying to represent as if the project was yet to be launched when the complainant booked it with the respondent however the respondent obtained the licence of project in the year 2011. The complainant booked unit with the respondent on 11.05.2013 and by that time the respondent had obtained the license and by the time complainant executed apartment buyer agreement, the respondent had obtained environment clearance as well. The



respondent submitted that it is correct that the respondent disclosed the obvious advantages, like world class amenities and timely completion/execution of the project etc. But all these disclosures were subjected to condition that the allottees shall fulfil their promise to pay in time bound manner but in the present case complainant has miserably failed to do so. The respondent denied that relying on the promise and undertakings given by the respondent in the alleged advertisements Mr. Kamal Sharma, booked an apartment/flat measuring 2150 sq. ft. in aforesaid project of the respondent, it is correct that total sale consideration is Rs.1,42,88,750/- which includes BSP, car parking, lfms, club membership, PLC etc.

23. The respondent denied that the complainant made payment of Rs.63,08,283/- to the respondent vide different cheques on different dates against the unit A-902. The manner of payment has already been explained above and as already discussed above in the event of forfeiture of earnest money only Rs.39,99,512/- shall be deemed to be paid against unit no. A-902.

24. The respondent submitted that it is correct that as per apartment buyer agreement, the respondent had allotted a unit/flat bearing no. A-902 on 9<sup>th</sup> floor in tower-A having



super area of 2150 sq. ft. to the complainant. It is submitted that as per clause 3.1 of the apartment buyer agreement, the respondent had agreed to deliver the possession of the flat within 4 years from the date of signing of the apartment buyer agreement dated 17.04.2014 or from the date of commencement of construction work moreover that clause is not unconditional and cannot be read alone. That the said clause is only applicable when the complainant had not made any default qua payment of instalments in a time bound manner but in the present case as there are lots of defaults which have been committed by the complainant, thus he cannot take shield of said clause and demand possession within 4 years. Moreover, even the agreed period of 4 years was subject to the force majeure conditions. It is submitted that the construction work is on the verge of completion and any refund at this stage would be highly prejudicial not only to the rights of the respondent but also the rights of other allottees as well.



25. The respondent denied the fact that the complainant regularly visited the site or was surprised to see that construction work is not in progress and no one was present at the site to address the queries of the complainant. It is denied that respondent has played fraud upon the

complainant. It is submitted that the construction work is in full swing and the structure + brick work + internal plaster has already been completed and at present the work of installing drain, water pipes etc is going on which will be followed by tile work. The respondent denied that the only intention of the respondent was to take payments for the tower without completing the work. It is submitted that the complainant has not yet made payment even though the tower is complete and only internal work is left out, which is also in progress. It is wrong and denied that the respondent mala-fide and dishonest motives and intention cheated and defrauded the complainant. It is denied that payment of all the demands raised by the respondent for the said unit has been received by the respondent. It is denied that there is any requests or reminders over phone calls or personal visits of the complainant. It is denied that the respondent has failed to deliver the possession of the allotted unit to the complainant within stipulated period. It is submitted that without making total payment in time bound manner the complainant has no right to seek possession within 4 years.



26. The respondent submitted that without receiving amount from the customers it is not possible for the builder to complete the structure within time, thus it is the customer



and in the present case the complainant did not make payment, thus delay, if any is only due to fault of complainant himself and he cannot put blame on respondent in any scenario. The respondent submitted that the ulterior motive of the complainant to file the present complaint is to avoid his liability to make payment due in terms of (actual amount and interest thereon) against the unit in question.

27. The respondent denied that the clause of compensation at a rate of (a) Rs.5/per sq. ft. per month for the period of delay is unjust and the respondent has exploited the complainant by not providing the possession of the unit as per the agreed possession plan. It is denied that respondent is escaping any liability, if any. It is denied that the respondent has incorporated the clause in one sided buyer agreement and offered to pay a sum @ Rs.5/- per sq. ft. for every month of delay. That the agreement was signed by the complainant out of his own free consent.

**Determination of issues:**

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:



28. With respect to the first and second issue raised by the complainant, the authority came across that as per clause 3.1 of apartment buyer agreement, the possession of the said apartment was to be handed over within 4 years (plus grace period of 6 months as per clause 5.1 of the said agreement) from the start of construction or execution of this agreement, whichever is later. Therefore, the due date for handing over the possession shall be computed from 17<sup>th</sup> April 2014. The clause regarding the possession of the said unit is reproduced below:

*“3.1 That the developer shall, under normal conditions, subject to force majeure, complete construction of tower/building in which the said flat is located with 4 years of the start of construction or execution of this agreement whichever is later, as per the said plans and specification seen and accepted by the flat allottee (with additional floors for residential units if permissible) ....*

*5.1 In case within a period as provided hereinabove, further extended by a period of 6(six) months if so required by the Developer, the Developer is unable to complete construction of the Said Flat as provided hereinabove (subject to force majeure conditions) to the Flat Allottee(s), who have made payments as required for in this Agreement, then the Flat Allottee(s) shall entitled to the payment of compensation for delay at the rate of Rs.5/- (Rupees Five only) per sq. ft. per month of the super area till the date of notice of possession as provided hereinabove in this Agreement. The Flat Allottee(s) shall have no other claim against the Developer in respect of the said Flat and Parking Space under this Agreement.”*



Accordingly, the due date of possession is 17<sup>th</sup> October 2018. Since, the due date of possession has so far not been crossed, no cause of action has arisen in the present complaint. Thus, the present complaint is premature and the refund of the deposited amount or interest for the delayed possession as per section 18 of the Act cannot be allowed.

29. With respect to the third issue raised by the complainant, the interest charged by the respondent on account of delay in making payment by the complainant is exorbitant and delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of super area till the date of notice of possession as per clause 5.1 of apartment buyer agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors. (W.P 2737 of 2017)***, wherein the Bombay HC bench held that:

*"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."*



### Findings of the authority

30. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

31. However, keeping in view the facts of the case and intervening circumstances, the authority is of the view that the complainant/purchaser did not make timely payment despite the fact that the respondent-company had raised demand notices to him from time to time. Now, at this juncture, the complainant is repeatedly asking for refund. However, as per the record on file, it has become crystal clear that despite the fact that the respondent had adjusted him for single flat by transferring the earlier cash consideration of Rs.29,85,693/-. However, the complainant did not bother to deposit the balance sale consideration on coming into force the RERA Act. He intends to enforce the provisions of Section 18 (1) of the Real Estate (Regulation & Development) Act, 2016. In such type of cases, the refund cannot be allowed as the respondent is well within his right to raise demand notice. As such, an option is given to the buyer to deposit the



balance amount for the purchase of the flat as the due date for offering possession has been given as 17.10.2018. The complainant cannot exercise his option to wriggle out of the project on account of non-delivery of the flat in time. The complaint is pre-mature.

### **Decision and directions of the authority**

32. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions in the interest of justice and fair play:

- (i) The respondent is directed to raise demand of dues pending against the complainant/ buyer.
- (ii) The complainant is directed to pay the interest at the prescribed rate i.e. 10.45% for the delay in making payment towards the demand raised by the respondent.
- (iii) In case complainant does not pay dues, action for cancellation may be taken as per provisions of agreement for sale.

33. The complaint is premature w.r.t. delivery of possession or refund of amount received by the promoter.



34. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered & for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the registration branch.
35. The order is pronounced.
36. Case file be consigned to the registry. Copy of this order be endorsed to registration branch.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

**(Dr. K.K. Khandelwal)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.09.2018

HARERA  
GURUGRAM





**PROCEEDINGS OF THE DAY**

Day and Date	Wednesday and 05.09.2018
Complaint No.	392/2018 Case titled as Mr. Kamal Sharma V/s M/S Pareena Infrastructure Pvt. Ltd.
Complainant	Mr. Kamal Sharma
Represented through	Shri Sushil, Advocate for the complainant
Respondent	M/S Pareena Infrastructure Pvt. Ltd.
Respondent Represented through	Shri Sanjeev Kumar, authorized representative on behalf of the company with Shri Prashant Sheoran, Advocate
Last date of hearing	2.8.2018

**Proceedings**

**The project is not registered.**

It was brought to the notice of the authority that the project is registerable but so far it has not been registered which is violation of Section 3 (1) of the Real Estate (Regulation & Development) Act 2016. The learned counsel for the respondent has been asked to advise the respondent to do needful at the earliest and this be treated as the notice as to why penal proceedings should not be initiated against the respondent under section 59 for violation of Section 3 (1) of the Act *ibid*, where under the penalty amount may extend upto 10% of the estimated costs of the Project.

Arguments advanced by counsel for both the parties have been heard. The complainant alleged that he had booked two flats bearing Nos.A02 and 902 in "Elite Residences" and he had paid an amount of Rs.63,08,283/-

in total against the original projected price of the property amounting to Rs.1,42,88,750/-. However, at the lateral stage the complainant requested the respondent to cancel the registration of flat bearing No.A02 and to adjust the earnest money deposited against this unit in favour of unit No.902 of his own volition. An agreement to this effect was executed on 17.4.2014 inter se both the parties, as a result of which his earlier payment of Rs.29,85,693/- was adjusted against the demand of Rs.13,33,207/-. However, the complainant/purchaser did not make any further payment despite the fact that the respondent-company had raised demand notices to him from time to time. Now, at this juncture, the complainant is repeatedly asking for refund. However, as per the record on file, it has become crystal clear that despite the fact that the respondent had adjusted him for single flat by transferring the earlier cash consideration of Rs.29,85,693/-. However, the complainant did not bother to deposit the balance sale consideration on coming into force the RERA Act. He intends to enforce the provisions of Section 18 (1) of the Real Estate (Regulation & Development) Act, 2016. In such type of cases, the refund cannot be allowed as the respondent is well within his right to raise demand notice. Keeping in view all the facts and circumstances of this case the respondent is directed to raise demand of dues pending against the complainant/buyer. As such, an option is given to the buyer to deposit the balance amount for the purchase of the flat as the due date for offering possession has been given as 17.10.2018. The complainant cannot exercise his option to wriggle out of the project on account of non-delivery of the flat in time. The complaint is pre-mature. He will have to pay the prescribed rate

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

of interest i.e. 10.45% as per the provisions of the Act ibid. Order is pronounced. Detailed order will follow. File be consigned to the Registry.

Samir Kumar  
(Member)

Subhash Chander Kush  
(Member)

Dr. K.K. Khandelwal  
(Chairman)  
05.09.2018